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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 United States of America,) 12-10510M
10 Plaintiff,)
11 vs.)
12 Juan Alamilla,)
13 Defendant.)
14 _____)
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16 This Court has considered the parties' Joint Motion to Extend Time for Indictment.
(Doc. 6)

17 Defendant has been charged by complaint with Illegal Entry, in violation of 8
18 U.S.C. § 1325(a) and 18 U.S.C. § 2,¹ which carries a maximum prison sentence upon
19 conviction of six months. Illegal Entry is a petty offense and a Class B misdemeanor. 18
20 U.S.C. §§ 3559(a)(7), 19; *United States v. Garcia-Martinez*, 2009 WL 4438623, at *3 (D.
21 Ariz. Nov. 30, 2009).

22 The indictment clause of the Fifth Amendment provides that “[n]o person shall be
23 held to answer for a capital, or otherwise infamous crime, unless on a presentment or
24 indictment of a Grand Jury” Generally, however, a defendant charged with a petty
25 offense has no constitutional right to proceed by indictment. *United States v. Ramirez*, 556

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27 _____
28 ¹ In light of the allegations in the Complaint, it is unclear why the Government charged Defendant with the Aiding and Abetting statute, 18 U.S.C. § 2.

1 F.2d 909, 911 (9th Cir. 1976) (citing *Duke v. United States*, 301 U.S. 492 (1937)); *see also*
2 Federal Criminal Rules 7(a)(1)(B) (“An offense (other than criminal contempt) must be
3 prosecuted by an indictment if it is punishable . . . by imprisonment for more than one
4 year.”), and Rule 58(b)(1) (“The trial of a misdemeanor may proceed on an indictment,
5 information, or complaint. The trial of a petty offense may also proceed on a citation or
6 violation notice.”).

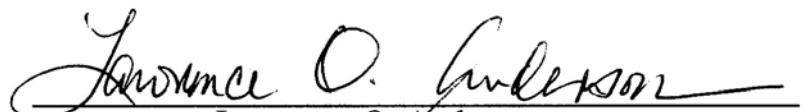
7 The Speedy Trial Act, 18 U.S.C. §§ 3161-3172, does not apply to petty offenses. *See*
8 18 U.S.C. § 3172(a) (defining “offense” to be “any Federal criminal offense which is
9 established by Act of Congress (other than a Class B or C misdemeanor or an infraction . .
10 . .”). “Petty offenses are exempted from both the requirement of a jury trial and the Speedy
11 Trial Act.” *United States v. Richmond*, 312 Fed. Appx. 56, at *1 (9th Cir. 2009) (citing
12 *United States v. Baker*, 641 F.2d 1311, 1319 (9th Cir. 1981)) (holding Speedy Trial Act does
13 not apply to petty offenses); *United States v. Carpenter*, 91 F.3d 1282 (9th Cir. 1996)
14 (collecting cases explaining that criminal contempt cannot be classified as either a felony or
15 misdemeanor for all purposes, but instead should be classified based on the sentencing range
16 imposed).

17 Based on the foregoing,

18 **IT IS ORDERED** that the parties’ Joint Motion to Extend Time for Indictment, doc.
19 6, is **DENIED** as irrelevant.

20 **IT IS FURTHER ORDERED** that counsel shall use the name of the Defendant,
21 Juan Alamilla, in the caption of all future filings as charged in the Complaint until such time
22 as a different name appears on a minute entry. *See* LRCrim 10.2.

23 Dated this 6th day of November, 2012.

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25 
26 Lawrence O. Anderson
27 United States Magistrate Judge
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